

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GADEMA QUOQUOI,

NOT FOR PUBLICATION

Plaintiff,

ORDER

11-CV-4792 (RRM)(JMA)

-against-

NEW YORK CITY DEPARTMENT OF
EDUCATION, et al.,

Defendants.

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ROSLYNN R. MAUSKOPF, United States District Judge.

On March 28, 2012, this matter was re-assigned to me. On February 27, 2012, Magistrate Judge Joan M. Azrack, who remains as the assigned Magistrate Judge, issued a Report and Recommendation (“R&R”) on several motions in the above-captioned action. (Doc. No. 35.) The R&R, filed February 27, 2012, indicated that, pursuant to 28 U.S.C. § 636(b), any objections were to be filed within fourteen days of receipt of the R&R.

On March 23, 2012, plaintiff Gadema Quoquoi, proceeding *pro se*, appeared in the Clerk’s Office and spoke with a *pro se* writ clerk. He informed the clerk that although he ordinarily receives court orders promptly, he did not receive the R&R with sufficient time to file objections. He apparently further indicated his intention to file an application for an extension of time to file objections.

Also on March 23, Quoquoi filed both a notice of interlocutory appeal with the Second Circuit Court of Appeals (Doc. No. 38), and in this Court, a motion for leave to appeal *in forma pauperis* (Doc. No. 39). It appears that the documents on which he filed his notice of interlocutory appeal were erroneously given to Quoquoi by the clerk’s office. Those appeal documents also incorrectly indicate that Quoquoi had suffered an adverse judgment in this action when, in fact, only an R&R had issued.

That Quoquoi would complete and file the appeal documents he received from the clerk’s office is certainly understandable. Nonetheless, his appeal is premature. No final judgment has issued in this

case, and this Court has not yet issued any order with regard to the recommendations set forth in Magistrate Judge Azrack's R&R. Rather, the proper procedural action would have been for Quoquoi to request leave for an extension of time in which to file objections to the R&R which, if made and granted, would have allowed him to file any objections.

In fact, on April 2, 2012, Quoquoi did file objections to the R&R. (Doc. No. 40.) His tardiness in filing, if any, will be excused in light of the confusion resulting from receipt of the wrong forms from the clerk's office and the delay in his receipt of the R&R.

CONCLUSION

In light of this procedural history, the Court hereby ORDERS that Quoquoi's objections to the R&R are deemed timely filed. Defendants shall have fourteen days from the date of this Order to file and serve any response(s) to these objections. Any defendant filing a response shall serve plaintiff and file with the Court proof of such service. The Court further recommends that Quoquoi consider whether he wishes to withdraw his interlocutory appeal to the Second Circuit in light of this Order. Quoquoi's motion for leave to appeal *in forma pauperis* is DENIED as the appeal is premature.

The Court FURTHER ORDERS that the Clerk of Court send by overnight mail to Quoquoi a copy of this Order, and note such mailing and corresponding tracking number on the docket. The Clerk of Court is FURTHER ORDERED to transmit to the United States Court of Appeals for the Second Circuit a Supplemental Electronic Index to the Record on Appeal that contains this Order.

SO ORDERED.

Dated: Brooklyn, New York
April 3, 2012

Roslyn R. Mauskopf

ROSLYN R. MAUSKOPF
United States District Judge